

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-10-TC-464
)	
Cheap2Dial Telephone, LLC)	NAL/Acct. No.: 201132170020
)	
Apparent Liability for Forfeiture)	FRN: 0017385527
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 7, 2011

Released: June 16, 2011

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Cheap2Dial Telephone, LLC (“Cheap2Dial” or “Company”)¹ has apparently willfully and repeatedly violated section 201(b) of the Communications Act of 1934, as amended (“Communications Act” or “Act”),² by “cramming” monthly charges for its dial-around long distance service on consumers’ local telephone bills without authorization of any kind from them. Over a twelve-month period, Cheap2Dial billed as many as 18,571 consumers monthly, during which time *no more than 22 consumers* (or 0.1 percent) ever actually used its service.³ Based upon our review of the facts and surrounding circumstances, we find that Cheap2Dial is apparently liable for a proposed forfeiture in the amount of three million dollars (\$3,000,000).

II. BACKGROUND

2. Cramming, the practice of adding charges to a customer’s local telephone bill without the customer’s authorization, results in significant consumer harm. Charges can often range from \$2.99 to as much as \$19.99 per month, and can go undetected by consumers for many months or longer because they are not generally disclosed clearly or conspicuously on the bill. The cramming entity can be the

¹ Cheap2Dial’s principal address is 4075 Linglestown Road, Harrisburg, Pennsylvania 17112. Barry Rynearson is the owner and is listed as Cheap2Dial’s Chief Executive Officer. Accordingly, all references in this NAL to “Cheap2Dial” also encompass Mr. Rynearson and all other principals and officers of this entity, as well as the corporate entity itself. Cheap2Dial’s business operations are managed by Adept Results, Inc. (“Adept Results”). Mr. Rynearson has a 9.75% interest in Adept Results. The owners of Adept Results are associated with another telecommunications carrier, VoiceNet Telephone, LLC (“VoiceNet”), which is the subject of another enforcement action we take today. Mr. Rynearson is the Chief Financial Officer of Adept Results and is also the Chief Executive Officer of VoiceNet, which is owned by Cathy Burger-Gray. The President, Secretary, and Treasurer of Adept Results is Joshua Gray.

² 47 U.S.C. § 201(b).

³ See Letter from Mitchell F. Brecher, Counsel for Cheap2Dial Telephone, LLC, to Kimberly A. Wild, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, at Section II, Tab A and Tab B (Mar. 28, 2011) (“Response to Second LOI”).

customer's own local exchange carrier ("LEC") or an unaffiliated third-party such as Cheap2Dial, in the instant case. The charges can be for additional telephone services, voice mail and similar services, or for other unrelated products and services such as chat lines, diet plans, and cosmetics.⁴

3. The Enforcement Bureau ("Bureau") began its investigation of Cheap2Dial on September 23, 2010, by issuing a letter of inquiry to the Company requesting information and documents relating to its charges for long distance service.⁵ In its initial response, dated November 8, 2010,⁶ Cheap2Dial represented, among other things, that it provides domestic interexchange telecommunications service on a resale basis through two "dial-around" service plans: the Max Minutes Plan, which offers 358 minutes of domestic interexchange calling per month for \$13.97, and the Max Minutes Plus Plan, which provides 383 minutes of domestic interexchange calling per month for \$14.97.⁷ Cheap2Dial also charges consumers monthly a maximum billing fee of \$5.95 and applicable Universal Service Fund charges.

4. Cheap2Dial's process for billing consumers involves three parties: Cheap2Dial; its billing aggregator, Billing Solutions Group, Limited d/b/a Billing Concepts ("Billing Concepts"); and the LEC that issues the bill to the consumer. Billing Concepts uses the name "USBI" in billing for long distance services. The LEC is compensated by Billing Concepts/USBI for placing the charges on the consumers' bills; Billing Concepts/USBI is paid by Cheap2Dial to manage billing requests and payments between the LEC and Cheap2Dial; and Cheap2Dial ultimately receives the money collected from the consumers who pay the charges. Generally, the third-party carrier supplies only a consumer's telephone number and the amount to be charged to the billing aggregator, which directs the LEC to place the charge on the consumer's telephone bill. Proof of consumer authorization is not provided by the third-party carrier nor required by the LEC.

5. Cheap2Dial markets its service exclusively on the Internet, using banners and webpages posted on various Internet sites.⁸ Online enrollment forms used to sign up customers allow for the input of the consumer's first name, last name, address, email address, home telephone number, and date of

⁴ For example, Adept Results also markets cosmetics and other products, the charges for which are placed on consumers' telephone bills. See "BBB Issues Warning on Web Companies Linked to Adept Results," Nov. 11, 2009, <http://wisconsin.bbb.org/article/bbb-issues-warning-on-web-companies-linked-to-adept-results-13501>.

⁵ See Letter from Kimberly A. Wild, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Cheap2Dial Telephone, LLC (Sept. 23, 2010) ("LOI"). The Bureau issued a second LOI to Cheap2Dial on February 25, 2011. See Letter from Kimberly A. Wild, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Mitchell F. Brecher, Counsel to Cheap2Dial Telephone, LLC (Feb. 25, 2011) ("Second LOI").

⁶ See Letter from Mitchell F. Brecher, Counsel for Cheap2Dial Telephone, LLC, to Kimberly A. Wild, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC (Nov. 8, 2010) ("Response to LOI").

⁷ See Response to LOI at 3-4. "Dial-around" long distance service allows a telephone subscriber to bypass (*i.e.*, dial around) the subscriber's preselected long distance telephone carrier, if any, and instead use the dial-around carrier's long distance service for a particular phone call. For each phone call, the subscriber must use the dial-around carrier's number and, in some instances, enter a PIN to connect the call.

⁸ See *id.* at 4. Cheap2Dial contends that it receives certain marketing and account management services from Adept Results. It appears that Adept Results, in fact, handles the vast majority of Cheap2Dial's business operations, including customer service, call center needs, banking and accounting, and legal services. The underlying carrier whose service Cheap2Dial resells is "TCS Communications Solutions, LLC." See *id.* at 6.

birth.⁹ Below the enrollment form is a summary of the terms of use, including a statement that the consumer will receive monthly recurring charges on his or her local telephone bill until the plan is cancelled.

6. As part of its investigation, the Bureau examined more than 125 complaints that had been filed by consumers about Cheap2Dial's service. These included ones that had been filed not only with the FCC, but also with state regulatory authorities, the Better Business Bureau, or with Cheap2Dial directly. All of the complainants contended that Cheap2Dial had charged them for service without their authorization.

7. These complaints notwithstanding, Cheap2Dial claims that it has "strict policies and procedures for verifying all service requests prior to activating and billing any customer account."¹⁰ According to Cheap2Dial, it "performs a series of tests to verify the enrollment information provided by the potential customer."¹¹ The Company states that these procedures include validating enrollment information through outside third-party database vendors."¹²

8. Cheap2Dial responded to consumer complaints with one of four different letters providing different explanations to consumers about how Cheap2Dial purportedly verified their enrollment. In one, the consumer is told that his or her first or last name was accurately matched with the address and telephone number provided. In the second, the consumer is told that his or her name was accurately matched with the address and telephone number provided and that the IP address used at sign-up passed Cheap2Dial's validation process and fell within the 100 mile radius of the address. The third letter says nothing about the address and telephone number matching, but notes that the IP address passed the Company's validation process and fell within the 100 mile radius of the enrollment address. This letter also provides the IP address used to sign up for service, and recommends that the complainant contact the Internet service provider of that address to determine who fraudulently used his or her telephone number during the sign-up process. The fourth letter says nothing about the address, telephone number, or IP address but provides the sign-up date and time and the IP address used during the sign-up, and recommends that the complainant contact the Internet service provider of that address to determine who fraudulently used the customer's telephone number during the sign-up process.¹³

9. Cheap2Dial states that following enrollment, it sends customers welcome messages via email and postal mail, using the email and postal addresses provided on the enrollment forms.¹⁴ The consumer is not required to confirm that the emails were received or to otherwise respond to the emails before Cheap2Dial begins charging for the service.

III. DISCUSSION

A. Violation of Section 201(b) of the Act

10. Section 201(b) of the Act states, in pertinent part, that "[a]ll charges, practices,

⁹ *Id.* at Attachment 2.

¹⁰ See Letters to FCC responding to consumer complaints.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See *id.*

classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful. . . .”¹⁵ The Commission has found that the inclusion of unauthorized charges and fees on consumers’ telephone bills is an “unjust and unreasonable” practice under section 201(b).¹⁶

11. We find that Cheap2Dial has willfully and repeatedly placed, or caused to be placed, charges on consumers’ telephone bills for services the consumer did not request or authorize. As indicated above, each of the more than 125 consumer complaints that the Bureau reviewed – whether they were filed with the FCC, state regulatory authorities, the Better Business Bureau, or with Cheap2Dial directly – contends that Cheap2Dial charged consumers for service without their authorization.¹⁷ The complainants consistently state they did not sign up for Cheap2Dial’s service, did not have any contact with Cheap2Dial prior to discovering the charges, and in most cases, do not even know the person whom Cheap2Dial alleges authorized the service. Moreover, many of the complainants observed that they had long distance (often unlimited) service with another carrier and therefore would have no need to pay for additional service with Cheap2Dial.¹⁸ Below are illustrative, not exhaustive, examples of some of the consumers who were charged by Cheap2Dial via their telephone bills:

12. Complainant S. Lovelette. Complainant Lovelette lives in St. Louis, Missouri. AT&T is her landline telephone service provider. In August of 2010, she noticed a charge from USBI on her AT&T bill. She learned that the USBI charge was for Cheap2Dial’s services and that she had been charged each month by Cheap2Dial since July of 2008. Ms. Lovelette had assumed the charge was from the state or federal government. She contacted Cheap2Dial and was told she signed up online in 2008. Cheap2Dial sent her a copy of an online enrollment form. “The only valid information on the confirmation was my home telephone #! The name, address, email, and birth date were all false. In fact, they didn’t match my personal information at all! I asked how they verify this information is accurate and that the person enrolling on-line is authorized to make changes for my account and I was informed that they have procedures in place and when the enrollment was performed it passed their security verification.” Cheap2Dial offered to credit her for three months if she first mailed in the billing statements. Ms. Lovelette was told she could not request a credit of more than 6 months. Cheap2Dial’s own records showed that the IP address used to sign up for service was located in Festus, Missouri, not Saint Louis, Missouri where Ms. Lovelette resides. Cheap2Dial told Ms. Lovelette that the IP address used at sign-up passed its validation process and fell within the 100 mile radius of the enrollment address. Cheap2Dial recommended that Ms. Lovelette contact the Internet service provider to determine who fraudulently used her phone number during the sign-up process. Cheap2Dial charged Ms. Lovelette for 25 months of service even though she never authorized or used its service.¹⁹

¹⁵ 47 U.S.C. § 201(b).

¹⁶ See *Long Distance Direct, Inc. Apparent Liability for Forfeiture*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, ¶ 14 (2000) (“*LDDI Forfeiture Order*”) (finding that the company’s practices of cramming membership and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services).

¹⁷ We note that Cheap2Dial provided only those complaints it received in writing or via email. It did not provide complaints Cheap2Dial may have received over the telephone.

¹⁸ See, e.g., Complaint from D. Law.

¹⁹ See Complaint from S. Lovelette.

13. **Complainant A. Newman.** Complainant Newman lives in Hilton, New York. His landline telephone service provider is Frontier. In November of 2010, he noticed a charge on his Frontier bill from Cheap2Dial. He later discovered he had been charged by Cheap2Dial for \$16.28 a month for over twelve months. When he contacted Cheap2Dial, the Company initially agreed to refund just six months of charges and only if Mr. Newman faxed the last six months of his phone bills. The name, home address, and email address on Cheap2Dial's enrollment form did not match Mr. Newman's personal information and the IP address used to sign up for service is located in Fairpoint, New York, not Hilton, New York. Only after Mr. Newman filed a complaint with the Better Business Bureau did Cheap2Dial refund \$228.01.²⁰

14. **Complainant A. Butkevick.** Complainant Butkevick's medical practice in Pearland, Texas has long distance service with AT&T. Mr. Butkevick discovered his business phone number had been charged by Cheap2Dial since August of 2008. Mr. Butkevick never signed up for service with Cheap2Dial. Cheap2Dial refused to refund any of the charges, despite the fact that its records showed another individual's name on the account. In addition, Billing Concepts' records revealed that the phone number belonged to Mr. Butkevick's medical practice, rather than to the person identified on Cheap2Dial's enrollment form. Cheap2Dial's verification procedures also showed that the IP address used to sign up for service was located in Mansfield, Texas. Nevertheless, Cheap2Dial charged him for 27 months for a service that Mr. Butkevick never authorized or used. After filing a complaint with the Public Utility of Texas, Mr. Butkevick finally received a refund of \$435.54.²¹

15. **Complainant B. Yeager.** Complainant Yeager works for a radio broadcasting company in Overland Park, Kansas. The company has telephone service with Qwest. Ms. Yeager discovered that Cheap2Dial had placed charges on the company's Qwest phone bill for several months. When Ms. Yeager contacted Cheap2Dial and asked it to provide proof of consent, "they provided an [e]nrollment [i]nformation 'confirmation email' that was entirely fraudulent." Cheap2Dial's records did not match the company's name, business address or email address. Ms. Yeager explained that the telephone line Cheap2Dial was billing was for a radio tower in the middle of a rural field and is "strictly for the use of monitoring the radio broadcast and therefore is NEVER answered by a person." Despite charging the company for five months of service, Cheap2Dial offered to refund just two months of charges. In its response to the complaint, Cheap2Dial told Ms. Yeager that the IP address used during the sign-up was located in Lexington, Nebraska, despite the fact that Ms. Yeager's company is in Kansas.²²

16. **Complainant Z. Schulman.** Complainant Schulman is 82 years old and lives in Cincinnati, Ohio. She has telephone service with Cincinnati Bell. When she discovered that she had been charged by Cheap2Dial through her Cincinnati Bell telephone bill since April of 2009, Ms. Schulman contacted Cheap2Dial to request a refund. Cheap2Dial told her she had signed up for service, even though the information on Cheap2Dial's enrollment form did not match that of Ms. Schulman. The name on the enrollment form was not hers, and the home address and email address did not belong to her. After several phone calls to Cheap2Dial, Ms. Schulman was instructed by a Cheap2Dial representative to fax in copies of her telephone bills. The representative suggested Ms. Schulman go directly to the Cincinnati Bell office to get the print-outs she needed. Ms. Schulman went to the main Cincinnati Bell office to retrieve copies of her telephone bills for April and May 2009. Ms. Schulman made a second trip to the Cincinnati Bell office to obtain copies of her June, July, August and September 2009 bills. After Ms.

²⁰ See Complaint from A. Newman.

²¹ See Complaint from A. Butkevick.

²² See Complaint from B. Yeager.

Schulman faxed in copies of her telephone bills, Cheap2Dial initially agreed to refund six months of charges, despite having charged her without her authorization for 13 months. Not until Ms. Schulman hired an attorney to try to recoup her money did Cheap2Dial agree to issue a refund of \$243.33.²³

17. The complainants' contention that Cheap2Dial "crammed" charges for its dial-around long distance service on their bills is corroborated by the fact that, between March 2010 and February 2011, Cheap2Dial placed charges on over 141,000 monthly telephone bills, knowing that just 22 consumers were using the service at any one time.²⁴ The number of consumers Cheap2Dial billed per month during this period fluctuated from 18,571 to 7,885; however, just 22 consumers (or 0.1 percent) were recorded ever using the service – compelling evidence that few if any of the consumers being billed had actually ordered service or were aware that they were being charged for it.²⁵

18. To the extent that it actually uses them, Cheap2Dial's validation and verification processes are clearly inadequate to confirm that the person who "enrolled" in one of its plans, *i.e.*, the one whom Cheap2Dial will charge for service, actually authorized the service.²⁶ As indicated, Cheap2Dial asserts that one of the ways it confirms customer authorization is to verify that the IP address used to sign up for service is within 100 miles of the telephone customer's billing address.²⁷ On its face, this in no way verifies that the person being billed for a service actually ordered the service. In fact, in many cases, as indicated above, the name and address in Cheap2Dial's enrollment records do not match the name and address of the customer who was charged for service. Similarly, the email address used to sign up for service often does not belong to the customer who is billed for service.²⁸ The only information that consistently belonged to the customer whom the Company charged was, in fact, his or her telephone number. Based on our review of the record, it appears that any validation procedure that Cheap2Dial

²³ See Complaint from Z. Schulman.

²⁴ See Response to Second LOI at Section II, Tab A and Tab B.

²⁵ *Id.*

²⁶ See, e.g., Complaint from A. McDavid ("I never received a letter, email \$25 Walmart gift card or any other correspondence from Cheap2Dial verifying that I ordered the service. The charge just appeared on my phone bill one month . . . My last name, address and phone number can be found in our local phone book. I would not call that verification! Except for the first letter of the first name on your so called 'letter of authorization' the first name is not even close to mine. The email address is not mine nor is the birthday correct."); Complaint from D. Wolfe (Name and address on Cheap2Dial's enrollment form did not match the customer's. Having contacted Cheap2Dial about the unauthorized charges, Ms. Wolfe "asked [the customer service representative] if they didn't run some sort of computer check on applications to make sure the phone number and name matched. Her strange reply raised questions in my mind. She said, 'Our data bases showed that it was a valid address in Waxhaw and a valid phone number in Waxhaw.'"); Complaint from T. Bowling ("They said on 11/26/2008 JAMES COOPER submitted an application via the internet to request these services. I have a copy of this application. I don't know a JAMES COOPER nor in the 15 years I've lived here with this # has one ever been here. The only thing on the app. that matches anything to do with my home is my phone #."); Complaint from C. Jorasch ("They said they perform 'extensive validation' on the sign up form but the information they collected was an unknown person with a different address, birthday, email, etc. from the phone number where it was charged.").

²⁷ See Letter to FCC responding to customer complaint.

²⁸ See, e.g., Complaint from R. Meade (on the application Cheap2Dial provided, "[t]he name was misspelled, the birth date was inaccurate, and the email address provided was not mine."); Complaint from J. Benedict ("When the consumer contacted USBI they stated they had proof he purchased these services. They sent the consumer a false email with all incorrect information."); Complaint from J. Treat ("I called Qwest the day I received the bill. They said I signed up for it on the internet. I do not have access to [e]-mail and haven't for the last 8 months").

actually performed simply verified the general existence of the telephone number and that the number was a working number—and in no way verified that an enrollee actually in any way intended to subscribe to Cheap2Dial’s dial-around service.

19. Cheap2Dial’s claims that it “verifies” a service request by sending welcome messages via email to the email address identified on the form is likewise of no consequence.²⁹ The process does not require any action on the part of the consumer to confirm either that the consumer received the email or that the consumer signed up for or agreed to be charged for Cheap2Dial’s service. Indeed, many of the complainants assert they never received any emails or other communications from Cheap2Dial regarding its long distance service. This would not be surprising given that, as noted above, the email address in Cheap2Dial’s records is generally not the consumer’s. Similarly, the welcome message sent to the postal address provided on the enrollment form would not reach the consumer when that address does not belong to the billed customer. Even if a consumer did, in fact, receive this welcome material, it is possible, if not probable, that he or she might reasonably discard the material as “junk” mail or spam, given that the consumer did not create a relationship with, or even know of the existence of, Cheap2Dial. On these facts, if a consumer did not authorize Cheap2Dial’s service, the mere act of sending an email or mail without requiring a response from the consumer is not sufficient “verification.”³⁰

20. Cheap2Dial’s success in what appears to be a constructively fraudulent enterprise seems to rely on the fact that individuals and businesses the Company enrolled in its service failed to notice the unauthorized charges in their multipage telephone bills and so simply proceeded to pay them, often unaware that they contained charges from an entity other than their own telephone company. The charges were often listed on the last pages of the bill and/or did not contain clear descriptions of the services provided. It would be difficult for someone who had never heard of Cheap2Dial or “USB1” (the billing aggregator) to know that there were unauthorized charges from another company on his or her telephone bill.³¹

21. If and when consumers ever discovered Cheap2Dial’s charges, the Company required

²⁹ See Letter to FCC responding to consumer complaint.

³⁰ Indeed, we note that much of the identifying information Cheap2Dial requests of a person when signing up for its long distance service—name, address, email address, telephone number, and date of birth—can be obtained through the purchase of aggregated lists of consumers that are commercially sold or from free internet websites such as whitepages.com. Nothing within Cheap2Dial’s sign-up webpage prevents the individual who is inputting the data from using someone else’s identifying information or otherwise falsifying that data. If the person signing up for the Cheap2Dial service inputs someone else’s telephone number, the person associated with that telephone number will be billed by Cheap2Dial regardless of whether the other information in the application is correct. *See, e.g.*, Complaint from V. Merryweather (person on authorization was Hooman Hoomanian; address was not Ms. Merryweather’s); Complaint from N. Gulshad (person on authorization was Kuta Maue; address was not Mr. Gulshad’s); Complaint from W. Lowery (person on authorization was Jaleesa Battle; address was not Ms. Lowery’s); Complaint from J. Farley (person on authorization was Paco Suave; address was not Mr. Farley’s); Complaint from K. Witte (person on authorization was Joe Barnes; address was not Mr. Witte’s); Complaint from N. Craig (person on authorization was Katrina King; address was not Mr. Craig’s); Complaint from K. Lalley (person on authorization was Anna Baker; address was not Ms. Lalley’s); Complaint from T. Haley (person on authorization was Jen Stilwater; address was not Mr. Haley’s); Complaint from O. Coronel (person on authorization was Jason Chen; address was not Mr. Coronel’s); Complaint from B. Yeager (person on authorization was Oscar Lara; address was not Ms. Yeager’s).

³¹ A practice that “convey[s] insufficient information as to the company’s identity, rates, practices, and range of services” may constitute a violation of section 201(b). *See Telecommunications Research & Action Center & Consumer Action*, 4 FCC Rcd 2157, 2159 ¶ 14 (Com.Car.Bur. 1989).

them to expend significant time and effort to attempt to have charges removed from their bills. For example, in many cases we reviewed, Cheap2Dial made it difficult for consumers to obtain full refunds of unauthorized charges, and only offered consumers a partial refund. In other cases, refunds were not provided until after the consumer filed a complaint with a state or federal regulatory authority. For example, Cheap2Dial charged Complainant Lovelette for 25 months. The Company provided no evidence that complainant authorized or used the service, yet when she contacted Cheap2Dial to have the charges removed, she was told the company would not credit the charges beyond six months. Only after Ms. Lovelette filed a complaint with the Missouri Attorney General's office was Ms. Lovelette given a full refund of the charges.³² Similarly, Cheap2Dial refused to issue a refund to Complainant Smith until she sent in copies of her phone bills and requested the refund in writing. Numerous other complainants say they were told by Cheap2Dial's customer service representatives that someone in the home had ordered the services and that the enrollment form was proof that the service was authorized. Many consumers were instructed to first review the enrollment "contract" and then submit their complaints in writing before any refund would be issued.³³ Others were forced to make several calls to Cheap2Dial and to speak with several employees before any refund was issued. For example, Complainant Bowling explained:

[First] they said and I quote[,] We don't refund money. And if you weren[']t smart enough to look at your bill that wasn't their fault. After another call or two they said they would refund me 6 months. If I could prove each bill date I was billed...So when I called USBI/Cheap2Dial back and said I now can prove bill dates and that I wanted the refund of \$313.88[,] as we were speaking and I asked again[,] they hung up on me.³⁴

22. Based on the record, we conclude that Cheap2Dial apparently has willfully and repeatedly placed, or caused to be placed, charges on complainants' telephone bills that they never authorized. The facts suggest that Cheap2Dial engaged in this conduct deliberately. To the extent it did not, we find that Cheap2Dial either knew, or reasonably should have known, through numerous customer inquiries and complaints that many of its customers had not authorized service and that the vast majority of them were not using its service – yet Cheap2Dial nevertheless proceeded to charge these consumers for months and sometimes years. Cheap2Dial's dismissive responses to the consumer complaints is further evidence that it apparently is deliberately billing consumers for services they did not authorize. Accordingly, we find that Cheap2Dial's cramming constitutes an unjust and unreasonable practice and demonstrates apparent willful and repeated violations of section 201(b) of the Act.

B. Proposed Forfeiture Pursuant to Section 503(b) of the Act

23. Section 503(b)(1) of the Act states that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.³⁵ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation, or each day of a continuing

³² See Complaint from S. Lovelette; *see also* Complaint from W. John.

³³ See, e.g., Complaint from K. Winslow ("[Cheap2Dial] advised me that I would have to request in writing a copy of the LOA for the initial charges to be returned to me and that it would take approximately 10 days...Verizon advised me if I did NOT pay these charges that they would continue to bill me a late fee").

³⁴ See Complaint from T. Bowling.

³⁵ 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(2).

violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act by common carriers.³⁶ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³⁷ Although the forfeiture guidelines do not establish a forfeiture amount for unjust or unreasonable practices, such as the imposition of unauthorized charges on consumers’ telephone bills, the guidelines do state that, “. . . any omission of a specific rule violation from the . . . [forfeiture guidelines]. . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.”³⁸ The Commission retains the discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act.³⁹

24. In *Long Distance Direct, Inc.* (“LDDI”), the Commission found that the “imposition of unauthorized charges on consumers’ telephone bills is a practice which is unjust and unreasonable within the meaning of section 201(b) of the Act,”⁴⁰ and assessed a \$40,000 penalty for each cramming violation investigated in that case.⁴¹ Consistent with LDDI, we find that each charge Cheap2Dial caused to be placed on a consumer’s bill without the consumer’s authorization constitutes an independent unjust and unreasonable practice, and thus a separate and distinct violation of section 201(b) of the Act. There appear to be thousands of such violations in this case for which the Commission is empowered to assess a penalty.⁴²

25. Weighing the facts before us and taking into account the extent and gravity of Cheap2Dial’s egregious conduct, as well as its culpability and information in the current record about its revenues, we find that a total forfeiture amount of \$3,000,000 is appropriate under the specific circumstances of this case.⁴³ As noted above, Cheap2Dial placed unauthorized charges of at least \$13.97 on more than 141,000 telephone bills over a twelve-month period alone and therefore billed nearly \$2,000,000 to consumers over that time period through its cramming operation. The forfeiture clearly

³⁶ 47 U.S.C. § 503(b)(2)(B). See also 47 C.F.R. § 1.80(b)(2). In 2008, the Commission amended section 1.80(b)(2) of the rules, 47 C.F.R. § 1.80(b)(2), to increase the maximum forfeiture amounts in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000).

³⁷ 47 U.S.C. § 503(b)(2)(E).

³⁸ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Guidelines*, Report and Order, 12 FCC Rcd 17087, 17099, ¶ 22 (1997) (“*Forfeiture Policy Statement*”); *recon. denied*, 15 FCC Rcd 303 (1999).

³⁹ *Id.*

⁴⁰ See *Long Distance Direct, Inc.*, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 314, 333 ¶ 25 (1998).

⁴¹ *Id.* at 337 ¶ 30.

⁴² As noted in the text, see *supra* ¶ 17, Cheap2Dial apparently caused unauthorized charges to be placed on more than 141,000 bills dated between March 2010 and February 2011. More than 90,000 of these bills date from June 2010 – within one year of the date of the instant NAL – and thus remain actionable under the statute of limitations set forth in section 503(b)(6)(B) of the Act. 47 U.S.C. § 503(b)(6)(B).

⁴³ The \$3 million penalty we propose is equivalent to applying a \$40,000 penalty to 75 violations, but as indicated, see *supra* note 42, the record shows that Cheap2Dial’s conduct involves a considerably higher number of violations during the actionable time period.

must exceed this amount in order to serve as an adequate deterrent and reflect the apparently intentional nature of Cheap2Dial's conduct. We therefore propose a forfeiture in the amount of \$3,000,000. In the event Cheap2Dial continues to engage in conduct that apparently violates section 201(b)'s prohibition against unjust and unreasonable practices, such apparent violations could result in future NALs proposing substantially greater forfeitures and revocation of Cheap2Dial's operating authority. Other third-party service providers are also on notice that practices such as those engaged in by Cheap2Dial are unjust and unreasonable, and that we may propose more significant forfeitures in the future as high as is necessary, within the range of our statutory authority, to ensure that such companies do not charge consumers for unauthorized services.

IV. CONCLUSION

26. We have determined that Cheap2Dial Telephone, LLC apparently violated section 201(b) of the Act as identified above. We have further determined that Cheap2Dial Telephone, LLC is apparently liable for a forfeiture in the amount of \$3,000,000.

V. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Cheap2Dial Telephone, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$3,000,000, for willful and repeated violations of section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 201(b).

28. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,⁴⁴ within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Cheap2Dial Telephone, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

29. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Cheap2Dial Telephone, LLC will also send electronic notification to Johnny.Drake@fcc.gov on the date said payment is made. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

30. The written statement, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications

⁴⁴ 47 C.F.R. § 1.80.

Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). *See* www.fcc.gov/osec/guidelines.html for further instructions on FCC filing addresses.

31. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

32. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested and First Class mail to Cheap2Dial Telephone, LLC, Attention: Matthew Berry, Patton Boggs LLP, 2550 M Street, NW, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary